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China, Peoples Republic of Agricultural Situation

Going to China?: Trademark your Intellectual Property Now!

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Report Highlights:

United States producers lost more than \$84 billion last year from intellectual property rights infringements in the People's Republic of China. Automobiles, sports equipment, drugs, food and other agricultural products all suffer. The more a product is recognized as a quality product, the more likely it is to be counterfeited and sold in the local market, in other countries, or even re-exported to the U.S. China is rapidly developing the tools necessary for you to protect your intellectual property, however. A very small investment of time and money can provide large dividends and future protection.

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United States producers lost more than \$84 billion last year from intellectual property rights infringements in the People's Republic of China. Automobiles, sports equipment, drugs, food and other agricultural products all suffer. The more a product is recognized as a quality product, the more likely it is to be counterfeited and sold in the local market, in other countries, or even re-exported to the U.S. China is rapidly developing the tools necessary for you to protect your intellectual property, however. A very small investment of time and money can provide large dividends and future protection.

China's rapid growth in production, income and spending has led to a commensurate growth in demand for food and other products. The expanding number of middle and upper-middle class consumers are increasingly interested in food quality and safety. In China, U.S. food products are considered to be of high quality and safe. For example, U.S. Pork, California Grapes, Sunkist Oranges, Washington Apples and Northwest Pears on supermarkets shelves complement or the more than \$7.5 billion U.S. exports of food and agricultural products to China.

While quality U.S. food products often make it to store shelves, an estimated 20-30 percent of products are counterfeit. "Top Ten" canned tomatoes that look very similar to Del Monte's brand, lemons labeled with "Sunkist Valencia" or "California Pistachios" on what are clearly domestic or imports compromise brand value and diminish profit. The Wisconsin Ginseng Board reports they have lost over one US billion dollars in exports to China over the last ten years as a result of counterfeit products.

Big companies that have established themselves in China include protecting their intellectual property as an integral part of the cost of doing business. This means registering your patent, copyright or trademark, and ensuring you understand as well as use the progressive enforcement mechanisms available in China to stop infringers.

The first step in protecting intellectual property in China is to trademark your logo or brand name. While there can be some pitfalls related to registration, it is a relatively easy process. Basic trademark registration requires an application, six copies of the trademark, and a power of attorney authorizing a trademark registration agent to submit the application on your behalf. Geographical indications, and collective and certification trademarks are all special or unique cases with special solutions.

Problems can also arise if your trademark is already registered. Squatting, which is a phenomenon from the early days of Internet domain name registration, is still common in China. China is a "first to file" trademark registration country, and American firms accustomed to operating in the U.S., which is a "first to use" trademark registration country can be caught off guard. Prevention is the best solution to squatting, so registering a product in China, perhaps most markets early is critical. The alternatives: litigation; purchasing your own trademark, and can be costly.

Registration requirements are straightforward. Professional intellectual property rights attorneys or trademark registration agencies can do a basic registration, including a search for prior registrations, document preparation and submission, for under \$500. This is a one trademark per "classification" cost, so where your product crosses classification boundaries the cost increases. Because U.S. and Chinese classification systems differ, having an intellectual property rights specialist assist in the classification of your product is key (also make sure you, and not your agent is the applicant). Get started as early as possible since registration often takes two to three years.

Once you are registered, your protection is extensive. Whether it is at the shores of the U.S. or China you can request appropriate officials to seize counterfeit product based on your

certification the product is counterfeit and a citation to the China Trademark Office's Internet website where your registration is located. China's increasingly large infrastructure of 'piracy police' are developing into a significant force to deal with China's counterfeiting challenges, and once your product is registered you have the option of focusing their attention on the protection of your intellectual property.

In response to these intellectual property threats, FAS China established the FAS Beijing IPR Office located in Agricultural Trade Office (ATO) Beijing. The office provides intellectual property protection assistance to U.S. cooperators, agricultural companies, and interests newly entering or already established in the China market. Contact LaVerne E. Brabant, Kevin Latner or Yuanchuan Liang at ChinaIPR@usda.gov.

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